



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1996

Ms. Laura S. Portwood
Senior Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0103

Dear Ms. Portwood:

You seek reconsideration of Open Records Letter No. 95-1265 (1995), in which this office determined that the Government Code chapter 552 required the City of Houston (the "city") to make certain information available to the public. We have assigned your request for reconsideration ID# 37782.

The city received several requests concerning certain employees in the Public Works and Engineering Department, the Office of Councilwoman Helen Huey, the Civic Center Department, the Mayor's Office, the Office of Councilman Joe Roach, the Department of Finance and Administration, and the City Attorney's Office. Specifically, the requestor sought the name and job title of those employees who have been provided a cellular phone by the city, the phone numbers of such cellular phones, and the billing statements for such cellular phones covering the 1994 calendar year and January, February, and March of 1995. You claimed that portions of the requested information are excepted under sections 552.024, 552.101, and 552.117 of the Government Code. We concluded in Open Records Letter No. 95-1265 (1995) that the city could not withhold the billing statements, specifically, the personal numbers called by the city employees, under section 552.101 of the Government Code.

In your request for reconsideration, you contend that the employees' constitutional privacy rights as applied through section 552.101 protect disclosure of personal calls made on cellular telephones furnished by the city but paid for by individuals who are also city officials and employees. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This

section encompasses the constitutional right to privacy, which protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

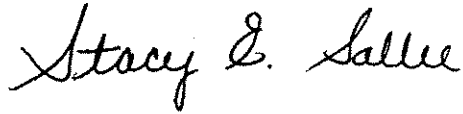
The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). As we stated in Open Records Letter No. 95-1265 (1995), home addresses and home telephone numbers are not "intimate" information. *See* Open Records Decision Nos. 532 (1989), 488 (1988), 478 (1987), 455 (1987). Therefore, the constitutional right of privacy does not except this information from disclosure.¹

You further contend that Open Records Letter No. 94-730 (1994) supports your claim that the personal calls made by city employees and officials are excepted from disclosure under section 552.101. However, there is a substantive difference between the facts present in Open Records Letter No. 94-730 (1994) and the situation the city presents. In Open Records Letter No. 94-730 (1994), the employee provided his own cellular telephone and was billed directly for it, with the city reimbursing him for his business-related telephone calls. Here, the city provides the cellular telephones for the employees' use. Therefore, regardless of who pays for the phone calls made on these telephones, the telephones are city equipment and the public is entitled to know what use is being made of that equipment. Consequently, we decline to reconsider our ruling in Open Records Letter No. 95-1265 (1995).

¹In your request for reconsideration, you claim for the first time that section 552.109 of the Government Code excepts the requested information from disclosure for city elected officials. We note that section 552.109 is somewhat duplicative of section 552.101, as this office has previously concluded that the common-law privacy test should be used under section 552.109. Open Records Decision No. 506 (1988). Therefore, as we concluded in Open Records Letter No. 95-1265 (1995) that common-law privacy does not except the requested information from required public disclosure, section 552.109 will also not except the requested information from disclosure.

If you have any questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in cursive script that reads "Stacy E. Sallee".

Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 37782

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